

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LINDA WALKER,

Plaintiff,

V.

SBC SERVICES, INC.,

Defendant.

No. 06 CV 00914

The Honorable Judge Wayne R. Anderson

Magistrate Arlander Keys

DEFENDANT SBC SERVICES, INC.'S MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT

Defendant SBC Services, Inc., n/k/a AT&T Services, Inc. (hereinafter “SBC”) pursuant to Federal Rules of Civil Procedure 8(a) and (8)(e)(1), and 12(b)(6), respectfully moves the Court to dismiss the two-count Amended Complaint of Plaintiff Linda Walker (hereinafter “Walker”) in its entirety. In support of its motion, SBC states as follows:

1. In Count I of her Amended Complaint, Walker alleges that SBC, her former employer, discriminated against her on the basis of her national origin (Amended Complaint (“Am. Compl.”), ¶ 1), sexual harassment and unlawful retaliation. Walker predicates Count I on allegations of sexual harassment and retaliation that were the subject of her first EEOC Charge filed in June 2004 (Am. Compl., ¶ 12), which the EEOC dismissed on June 13, 2005 (Orig. Compl., Ex. A). Since Walker did not file a lawsuit within the prescribed ninety-day statutory time period, these allegations on which Walker predicates Count I are time-barred pursuant to 42 U.S.C. 2000e-5(f)(1). Accordingly, Count I must be dismissed with prejudice.

2. Although incomprehensible from her pleading, Walker filed a second EEOC charge (charge number 210-2005-09032) in September 2005 alleging retaliation for filing the

June 2004 Charge. This second EEOC charge was dismissed in January of 2006. Walker filed this lawsuit within ninety days of that dismissal. Alternatively, to the extent that Count I is premised on certain non-time-barred allegations, Count I of Plaintiff's Amended Complaint should be dismissed without prejudice because it violates both the spirit and the letter of Federal Rules 8(a) and (8)(e)(1).

3. In Count II of her Amended Complaint, Walker asserts an Illinois common law claim of retaliatory discharge. Walker alleges that SBC terminated her in retaliation for: (1) filing an EEOC complaint, and (2) filing internal complaints at SBC reporting behavior that violated company policy (Am. Compl. ¶ 19). Count II should also be dismissed with prejudice. *First*, Count II is preempted by the Illinois Human Rights Act. *Second*, Count II fails because Walker does not, and cannot, satisfy the elements of a retaliatory discharge claim under Illinois law.

4. For all of these reasons, Counts I and II of Plaintiff's Amended Complaint fail as a matter of law and should be dismissed. The grounds supporting Defendant's motion are more fully set forth in the accompanying Memorandum of Law in Support, which is incorporated herein by reference.

WHEREFORE, Defendant SBC Services Inc., n/k/a AT&T Services, Inc., respectfully requests that this honorable Court enter an order granting its motion to dismiss Plaintiff's Amended Complaint in its entirety with prejudice and granting such other and further relief as the Court may deem just and proper.

Respectfully submitted,

SBC SERVICES, INC.

By: /s/ Jeffrey J. Mayer
One of Its Attorneys

Jeffrey J. Mayer (ARDC No. 6194013)
Jennifer L. Milos ARDC No. 6275532)
Freeborn & Peters LLP
311 S. Wacker Drive, Suite 3000
Chicago, Illinois 60606
(312) 360-6000

Dated: October 6, 2006

1205271